464

SUPREME COURT OF THE UNITED STATES.

No. 91.

THE UNITED STATES, PLAINTIFF IN ERROR.

vs.

GORDON D. BOYD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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Langtree & O'Sullivan, Print.—1840.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you between the United States of America, plaintiffs, and Gordon D. Boyd, Samuel Ragsdale, Francis Leech, Buckner Harris, John D. Boyd, Joseph Grigsby, William Dodd, Zachariah Rector, Sylvester Pearle and Stephen Cocke, defendants, a manifest error hath happened to the great damage of the said United States of America, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in his behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States, the sixty-fourth.

[L. S.]

Issued Nov. 28th, 1833.

WM. BURNS, *Clerk.*
Circ't Ct. of U. S. So. Dist. Miss.

UNITED STATES,
vs.
GORDON D. BOYD and others.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore to wit: on the twenty-fourth day of April, in the year one thousand eight hundred and thirty-eight, came the United States of America, by R. M. Gaines, their attorney,

into the clerk's office of the circuit court of the United States for the district of Mississippi, and sued out the following writ of summons ad respondendum against Gordon D. Boyd and others, to wit:

UNITED STATES OF AMERICA, *District of Mississippi, ss.*

The President of the United States, to the marshal of the Mississippi district, greeting:

We command you, without delay, to summon Gordon D. Boyd, Samuel Ragsdale, Francis Leech, Buckner Harris, John D. Boyd, Joseph Grigsby, William Dodd, Zachariah Rector, Sylvester Pearl and Stephen Cocke, all citizens of the State of Mississippi, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday of May next, to answer to the United States of America of a plea that they render to the said plaintiffs the sum of two hundred thousand dollars, which they owe to and unjustly detain from said plaintiffs, to their damage seventy-five thousand dollars, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against them by default; and have then and there this writ.

[L. S.] Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the 24th day of April, A. D. 1838, and of the Independence of the United States the sixty-second.

WM. BURNS, *Clerk.*

On which writ the marshal by his deputies made the following returns.

"Executed 27th April, 1838, on J. D. Boyd, and G. D. Boyd.
W. M. GWIN, *Marshal.*
By J. D. MAXWELL, *Dept.*"

"Came to hand Saturday morning, 28th April, 1838. Executed on Francis Leech, Sylvester Pearl, Joseph Grigsby, Buckner Harris, all on the 28th April, 1838.
WM. M. GWIN, *Marshal.*
By his deputy J. W. BYRNE."

"Came to hand the 2d day of May, 1838; and executed on Samuel Ragsdale, the same day. Stephen Cocke is not in my county.
May 2d, 1838.
WM. M. GWIN, *Marshal.*
By his deputy D. H. MORGAN."

And on the same day of suing out the writ aforesaid, the plaintiffs, by their said attorney, filed their declaration herein, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Mississippi.*

Circuit Court United States, ninth circuit, district of Mississippi, May term, 1838.

The United States of America complain of Gordon D. Boyd, Samuel Ragsdale, Francis Leech, Buckner Harris, John D. Boyd, Joseph Grigsby, William Dodd, Zachariah Rector, Sylvester Pearl and Stephen Cocke, in custody, &c., of a plea that they render to the plaintiffs the sum of two hundred thousand dollars, which they owe to and unjustly detain from the said plaintiffs.

For that whereas, the said defendants heretofore, to wit: on the 15th day of June, 1837, at the district aforesaid, made their certain writing obligatory, sealed with their seals, a certified copy of which is now here shown to the court, the date whereof, is the day and year aforesaid, and thereby acknowledged themselves to be held and firmly bound unto the United States of America, in the full and just sum of two hundred thousand dollars, money of the United States, to which payment well and truly to be made, the said defendants thereby then and there bound themselves, their heirs, executors and administrators, jointly, severally and firmly. Yet the said defendants, although often requested so to do, have not yet, nor has either of them, paid to the said plaintiffs the said sum of money above demanded, or any part thereof, but so to do, have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of the plaintiffs $75,000, and therefore they sue &c.

R. M. GAINES, *U. S. Att'y.*

And afterwards, to wit, on the fifth day of July, A. D. 1838, the following writ of alias summons ad respondendum issued, directed to the marshal of the Mississippi district, in the words and figures, following, to wit:

UNITED STATES OF AMERICA, *District of Mississippi, ss.*

The President of the United States to the marshal of the Mississippi district, greeting.

We command you, as before we commanded you, without delay, to summon Gordon D. Boyd, Samuel Ragsdale, Francis Leech, Buckner Harris, John D. Boyd, Joseph Grigsby, William Dodd, Zachariah Rector, Sylvester Pearl and Stephen Cocke, that they be and appear before the circuit court of the United States, to be held at the town of Jackson, in and for the district of Mississippi, on the first Monday of November next, to answer to the United States of America, of a plea that they render to the said plaintiffs the sum of two hundred thousand dollars, which they owe to and unjustly detain from them, to their damage seventy-five thousand dollars, and that they do file their plea or defence with the clerk of said court, on or

before the meeting of the same, or judgment will be given against them by default; and have then and there this writ.

[L. S.] Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, the fifth day of July, A. D. 1838, and of the Independence of the United States, the sixty-third.

WM. BURNS, *Clerk.*

The marshal will execute this process upon Wm. Dodd, Zachariah Rector and Stephen Cocke, only; the other defendants being served with process to May term, 1838.

WM. BURNS, *Clerk.*

On which writ, the marshal of the northern district of Mississippi, and one of his deputies, made the following returns.

"Executed on Stephen Cocke, August 15th, 1838, by delivering him a true copy in person.

ADOLPHUS G. WIER.
Marshall U. S., N. D. M.

Executed on William Dodd, by delivering him a true copy on the 28th day of August, 1838. Executed on Zachariah Rector, on the 27th of August, 1838, by leaving a true copy at his residence with a free white person over the age of sixteen years.

BENJ. G. WIER, *D. M.*

And the defendants come when and where, &c., and crave oyer of the original bond referred to in the declaration of the plaintiffs, with the condition of said bond thereto annexed.

PRYOR LEA, *Attorney.*

And the defendants further crave oyer of the bond referred to in the declaration of the plaintiffs with the condition of said bond thereto annexed, authenticated according to act of Congress.

PRYOR LEA, *Attorney.*

And the defendants, Samuel, Francis, Buckner, John D., Joseph, William, Zachariah, Sylvester, and Stephen, by attorney, come and defend the wrong and injury, when, &c., and crave oyer of the bond declared on, and it is read to them as follows, to wit:

"Know all men by these presents, that we, Gordon D. Boyd, Samuel Ragsdale, Francis Leech, Buckner Harris, John D. Boyd, Joseph Grigsby, William Dodd, Zachariah Rector, Sylvester Pearl and Stephen Cocke, are held and firmly bound unto the United States of America, in the full and just sum of two hundred thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors and administrators, firmly by these presents, sealed with our seals and dated this fifteenth day of June, in

the year one thousand eight hundred and thirty-seven." And said defendants also crave oyer of the condition of said bond, and it is read to them as follows, to wit:

"The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said Gordon D. Boyd, receiver of public moneys for the district of lands subject to sale at Columbus, in the State of Mississippi, for the term of four years from the 27th day of December, 1836.

Now, therefore, if the said Gordon D. Boyd shall faithfully execute and discharge the duties of his office, then the above obligation to be void and of none effect, otherwise it shall abide and remain in full force and virtue.

G. D. BOYD.	[SEAL.]
SAMUEL RAGSDALE.	[SEAL.]
FRANCIS LEECH.	[SEAL.]
B. HARRIS.	[SEAL.]
JOHN D. BOYD.	[SEAL.]
JOSEPH GRIGSBY.	[SEAL.]
WILLIAM DODD.	[SEAL.]
ZACHARIAH RECTOR.	[SEAL.]
SYLVESTER PEARL.	[SEAL.]
STEPHEN COCKE.	[SEAL.]

Sealed and delivered in presence of
R. E. HARRIS.
Approved, Oct. 9th, 1837.

JAS. WITCOMB.

All which being heard the said defendants say, that the plaintiff ought not to have and maintain said action against them, because they say that the said Gordon D. Boyd did, from time to time, and at all times after the making of the said bond, and the said condition thereof, well and truly observe, perform, fulfil and keep the condition of said bond by faithfully executing and discharging the duties of his office, according to the tenor and effect, true intent and meaning of the said condition of said bond; and this they are ready to verify; wherefore they pray judgment, if the plaintiff shall have and maintain said action against them in this behalf.

COCKE & LEA,
Attorneys.

And the said plaintiffs, for replication to the plea of the said defendants in this behalf pleaded, say, that by reason of any thing in said plea contained, they ought not to be barred or precluded from having and maintaining their action aforesaid, because they say that the said Gordon D. Boyd did not well and truly keep and perform the condition of the said bond or writing obligatory, but broke the same in this, to wit: that he the said Gordon D. Boyd, after the said 27th day of December, 1836, and while he was receiver of public moneys for

the district of lands subject to sale at Columbus, in the State of Mississippi, and as such receiver, received of the public moneys of the United States, divers large sums, amounting in the whole to a large sum of money, to wit, the sum of fifty-nine thousand six hundred and twenty-two dollars and sixty cents, to wit, at the district aforesaid, which said sum of fifty-nine thousand six hundred and twenty-two $\frac{60}{100}$ dollars, the said Gordon D. Boyd wholly failed, neglected and refused to pay over to the said plaintiffs pursuant to his instructions from the Secretary of the Treasury of the United States, as he was bound to do by law and the duty of the said office. And so the said plaintiffs say that the said Gordon D. Boyd has not kept and performed the condition of said bond, but has broken the same, and to keep and perform the same has wholly failed, neglected and refused, whereby an action has accrued to the said plaintiffs to demand and have of the said defendants the said sum of two hundred thousand dollars above demanded, and this the said plaintiffs are ready to verify, &c; wherefore they pray judgment, &c.

R. M. GAINES,
U. S. Attorney.

And the said defendants say that the said replication of the said plaintiffs to the said plea of the said defendants, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendants; and that they the said defendants are not bound by law to answer the same; and this they the said defendants are ready to *verify*. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendants pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, and the said defendants, according to the form of the statute in such case made and provided, state and show to the court here, the following causes of demurrer in law to the said replication.

1st. The said replication does not state or show the time at which the said Gordon D. Boyd, as receiver of public moneys for the district of lands subject to sale at Columbus in the State of Mississippi, received the said sum of money, mentioned in the said replication, after his said appointment as receiver as aforesaid; whether the said sum of money was received by him as such receiver, before or after the day of the date of the said writing obligatory sued on.

2d. The said replication does not state or show that the said Gordon D. Boyd hath failed, neglected or refused to pay over to the plaintiffs any moneys collected or received by him as such receiver, at any time since the day of the date of the said writing obligatory.

3d. Said replication does not show that said Gordon D. Boyd, as such receiver, actually had any money of the United States after the date of said bond and condition, or at that date.

4th. The said replication is a departure from the declaration.

5th. The said replication is uncertain and insufficient in law to charge the said defendants.

PRYOR LEA and
STEPHEN COCKE,
Attorneys for defendants.

And afterwards, to wit, at a circuit court of the United States, held for the southern district of Mississippi, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, (until which time this cause was regularly continued,) came the parties aforesaid by their respective attorneys, and on motion of the plaintiffs by their attorney, leave is given to file an amended replication, which is done accordingly, and is in the words and figures following, to wit:

And the said plaintiffs, for replication to the plea of the said defendants in this behalf pleaded, say, that by reason of any thing in said plea contained, they ought not to be barred or precluded from having and maintaining their aforesaid action against the said defendants, because they say that the said Gordon D. Boyd did not well and truly keep and perform the condition of said bond declared on, but broke the same in this, to wit: that he the said Boyd, after the said 27th day of December, 1836, and while he was receiver of public moneys for the district of land subject to sale at Columbus in the State of Mississippi, and as such receiver, received of the public moneys of the United States, divers large sums of money, amounting iu the whole to a large sum of money, to wit, the sum of fifty-nine thousand six hundred and twenty-two dollars and sixty cents, to wit, at the district aforesaid, which said sum of fifty-nine thousand six hundred and twenty-two $\frac{60}{100}$ dollars, the said Gordon D. Boyd, then and there wholly failed, neglected and refused to pay over to the said plaintiffs, pursuant to his instructions from the Secretary of the Treasury of the United States, as he was bound to do by law and the duty of his said office of receiver; and for a further breach of the condition of said bond, the said plaintiffs further in fact say, that the said Gordon D. Boyd, after the 27th day of December, 1836, and on divers days and times, between that day and the 30th day of September, 1837, while he was receiver of public moneys for the district of land subject to sale at Columbus in the State of Mississippi, and as such receiver, received divers large sums of money of the public moneys of the United States, amounting in the whole to a large sum of money, to wit, the sum of fifty-nine thousand six hundred and twenty-two $\frac{60}{100}$ dollars, to wit, at the district aforesaid; the said plaintiffs further say, that the said sum of fifty-nine thousand six hundred and twenty-two $\frac{60}{100}$ dollars remained in the hands of the said Gordon D. Boyd as receiver as aforesaid, on the said 30th day of September, 1837, to wit, at the district aforesaid, and that the said Gordon D. Boyd, then and there wholly failed, neglected and refused to pay the same over to the plaintiffs pursuant to his instructions from the Secretary of the Treasury of the United States, as he was bound

to do by law and the duty of his said office. And so the said plaintiffs say that the said Gordon D. Boyd did not well and truly keep and perform the condition of said bond, but broke the same, and to keep and perform the same has hitherto wholly failed, neglected and refused, whereby an action has accrued to the said plaintiffs to demand and have of the said defendants the said sum of two hundred thousand dollars above demanded, and this the said plaintiffs are ready to verify. Wherefore they pray judgment, &c.

R. M. GAINES,
U. S. Attorney.

To which amended replication the said defendants, by their attorneys, come and file their demurrer, in the words and figures following, to wit:

And the said defendants say that the said amended replication of the said plaintiffs to the said plea of the said defendants, and the matters therein contained in the manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendants, and that they the said defendants are not bound by law to answer the same, and this the said defendants are ready to verify. *Wherefore*, by reason of the insufficiency of the said replication in this behalf, the said defendants pray judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against them, and the said defendants, according to the form of the statute in such case made and provided, state and show to the court here the following causes of demurrer to the said replication, that is to say:

First. The first breach of the condition of said writing obligatory as assigned by the said plaintiffs, does not state or show the time at which the said Gordon D. Boyd, as receiver of public moneys for the district of lands subject to sale at Columbus in the State of Mississippi, received the said sum of money mentioned in the said first breach of the condition of said writing obligatory, after his said appointment as receiver as aforesaid, whether the said sum of money was received by him as such receiver, before or after the day of the date of the said writing obligatory.

Second. The said first breach of the condition of said writing obligatory, does not state or show that the said Gordon D. Boyd hath failed, neglected or refused to pay over to the plaintiffs any moneys collected or received by him as such receiver, at any time after the day of the date of the said writing obligatory.

Third. The second breach assigned to the condition of the said writing obligatory, does not state or show any time at which the said Gordon D. Boyd, as receiver of public moneys as aforesaid, received the said sum of money mentioned in the said second breach.

Fourth. The said second breach to the condition of the said writing obligatory, does not state or show that the said Gordon D. Boyd, as such receiver, neglected, failed or refused to pay over any money collected by him as such receiver, at any time after the day of the date of the said writing obligatory.

Fifth. The said replication is in other respects uncertain, informal, and insufficient in law, to charge the said defendants.

PRYOR LEA and
STEPHEN COCKE,
Attorneys for defendants.

And the said plaintiffs, as to the demurrer of the said defendants to the replication of said plaintiffs, say that the said replication and the matter thereof, are good and sufficient in law for the said plaintiffs to have and maintain their action aforesaid, and this they pray may be enquired of by the court.

R. M. GAINES,
U. S. Attorney.

And now, to wit, at a circuit court of the United States, held as aforesaid, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and thirty-nine, being the day and year first aforesaid, (until which time this cause was regularly continued) came the parties aforesaid, by their respective attorneys, whereupon all and singular the matters of law arising upon the defendants demurrer to the plaintiffs amended replication aforesaid, being argued, and by the court here fully understood, after mature deliberation thereon, it is ordered that said demurrer be sustained with leave to reply over, which the plaintiffs declining to do, it is ordered by the court that judgment be now entered for the defendants on the demurrer aforesaid.

Therefore it is considered by the court that the plaintiffs take nothing by their bill, &c., and that the said defendants go hence without day, and recover against the said plaintiffs their costs and charges by them about their defence in this behalf expended.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court of the United States for said district:

I, William Burns, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing twelve pages contain a true, full and complete transcript of the record and proceedings in a certain action of debt lately decided in our said court between the parties therein named, as fully and completely as the same remains of record in my said office.

Given under my hand and the seal of said court at Jackson,
[SEAL.] the 12th day of December, A. D. 1839, and in the 64th year of the Independence of the said United States.

WM. BURNS, *Clerk.*